IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7439 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES Yes

2. To be referred to the Reporter or not? Yes :

3. Whether Their Lordships wish to see the fair copy of the judgement? No :

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No :

5. Whether it is to be circulated to the Civil Judge? No :

UDAYANKUMAR NATVARLAL PANDYA

Versus

KALOL NAGAR PALIKA

Appearance:

MRS DT SHAH for Petitioner

MR MI PATEL for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2, 3

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 18/04/2000

ORAL JUDGEMENT

1. The present petition is filed seeking direction against the respondent Municipality to the effect that the petitioner shall be absorbed as Barnishi Clerk from

1.11.1988 onwards.

2. Ms.Shah has pointed out that the present petitioner is working since 15.1.1982 as is mentioned in Annexure : A, Page : 9. Ms. Shah has also pointed out that thereafter the matter was before the Collector and the Collector in Appeal No.2 of 1988 has passed an order to the effect that the Appeal of the present petitioner, who was one of the appellants is partly allowed and that the Municipality should verify about the earlier service of the appellant and if the appellants are entitled for the benefits, the Nagarpalika shall decided about the same. Ms.Shah has heavily relied upon a Judgment of this Court in Special Civil Application No.5469 of 1983 (Coram : A.P.Ravani, J., as His Lordship then was,) dated 12.12.1983, wherein this Court was dealing with a similar situation and relying upon the settlement arrived at between the parties i.e. Union on one hand and the Nagarpalika on the other has observed that... "It was agreed that so far as question of making permanent the daily rated employee is concerned the Nagarpalika will have to prepare the seniority list and the list of the daily rated employee will be in accordance with the seniority and the copy of the same will be given to the Union also." This Court has further observed as under :

> "The contention of the Municipality is that the Municipality prepare a list on the basis of the seniority but thereafter the list is placed before the Selection Committee and as per the recommendation of the staff selection committee the persons are appointed to the permanent posts. Thus the basis of selection is not seniority, according to the Municipality. As per the second list, the person concerned gets a right to be considered only. On the fact of it, this cannot be considered to be the correct meaning of the settlement arrived at between the parties. When the Municipality agreed to maintain seniority list while considering the question of making the daily wage workers permanent, it is clear that on the basis of that seniority list only the daily wage workers were required to be made permanent.. Had it not been so, the settlement arrived at looses its meaning because the eligible persons have otherwise also right as to be considered for the permanent posts. The very fact that the Municipality agreed to maintain a seniority list of the daily wage workers for the purpose of making appointment on permanent basis indicates that the Municipality had agreed to make

appointment on permanent basis in accordance with seniority. There is no dispute about the fact that the petitioner is senior to respondents Nos.3,4 & 5. In this view of the matter the petition requires to be allowed."

Looking to the aforesaid Judgment and order of this Court in a similar matter, this petition is also required to be allowed.

3. At this stage Mr.M.I.Patel, learned Counsel for the respondents points out that in Affidavit in Reply filed on behalf of the respondent in Paras : 7 & 8 it is submitted as under :

"7. With respect to the averments made in paragraphs 6 and 7 of the said Special Civil Application, I say that it is true that the petitioner is being engaged as a daily wager for doing the work of Barnishi Clerk; but thereby he cannot claim any right of being absorbed permanently on the said post. I say that there is only one permanent post of a Barnishi clerk sanctioned by the Director of Municipalities on the establishment of the respondent Municipality; and as and when there is increase in the workload on the said table, a daily wager is engaged to help the regular Barnishi clerk.

8. With reference to the averments made in paragraphs 8 & 9 of the said Special Civil Application, I say that it is true that the Labour Court has passed an award requiring the respondent Municipality to create an additional post of Barnishi Clerk. However, the proposal submitted by the respondent Municipality to the Director of Municipalities for sanction of an additional post under the provisions of the Gujarat Municipalities Act has not been accepted and sanction has not been given by the third respondent herein; and, therefore, such a post could not be created."

4. Ms. Shah for the petitioner has submitted that so far as the petitioner is concerned he is one of the most senior daily rated employee of the Nagar Palika and hence he is required to be made permanent in view of the Judgment of this Court in Special Civil Application No. 5649 of 1983. In the said Judgment, this Court has

relied upon the agreement arrived at between the Nagarpalika and the Union. Persuant to the said Agreement Nagarpalika is supposed to maintain seniority list and on the basis of the seniority list maintained by Respondent No.1 all the daily rated workers are required to be made permanent. Mr.Patel is not able to point out any reason for which that agreement between the parties is not to be followed as a mode of working out the system for making permanent empwloyee from the daily rated employee. Looking to the facts that the petitioner is working as daily-rated clerk since 1982, and even after filing this petition in the year 1990, the petitioner is continued to work as daily rated worker, on the basis of interim relief granted by this Court, is an additional ground in favour of the petitioner. The petition is required to be allowed. The respondent Municipality is directed to absorb the petitioner on permanent basis considering his case on the basis of seniority. The respondent Municipality is further directed to give him the benefit as if he was appointed on permanent basis from the date when his junior is absorbed on permanent basis. It can be pointed out that the prayer of the petitioner that the petitioner will be absorbed from 1.11.1988 cannot be granted in light of the fact that what was agreed between the Union and the respondent Nagarpalika that a list of the daily rated workers shall be maintained and on the basis of the said list the employee shall be made permanent. Ms. D.T. Shah for the petitioner has fairly submitted that so far as monetary benefits are concerned, the respondent Nagarpalika shall be directed to pay the same from the date of the petition, fixing notional benefits from the date of the immediate junior being appointed. Mrs. D.T.Shah makes this concession under the authority of the clients/petitioner. The respondent Nagarpalika shall undertake to obtain necessary approval from the Director of Municipality persuant to this order.

The respondent - Nagar Palika shall comply with these directions as early as possible, but not later than 31.7.2000.

Rule is made absolute to the aforesaid extent with no order as to costs.

sd/-

Date : April 18, 2000 (RAVI R. TRIPATHI, J.)

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